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18 UNITED STATES DISTRICT COURT

19 NORTHERN DISTRICT OF CALIFORNIA

20 SAN FRANCISCO DIVISION

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14 SUNNYSIDE DEVELOPMENT
15 COMPANY LLC,
16 Plaintiff,
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18 vs.
19 CAMBRIDGE DISPLAY TECHNOLOGY
20 LIMITED, CDT OXFORD LIMITED,
21 OPSYS LIMITED, and JOHN DOES I
22 through V,
23 Defendants.

No. C-08-1780-MHP

**REPLY MEMORANDUM IN
SUPPORT OF MOTION OF
DEFENDANT CAMBRIDGE
DISPLAY TECHNOLOGY
LIMITED TO STAY CASE
PENDING APPEAL**

Date: September 8, 2008
Time: 2:00 p.m.
Courtroom 15, 18th Floor
Hon. Marilyn Hall Patel

Filed herewith:
Request for Judicial Notice (Dkt. 43)

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1 **I. INTRODUCTION.**

2 Sunnyside's opposition to the motion to stay this case pending appeal largely
 3 ignores the basis for the motion: (1) this Court has discretion to enter a stay, and (2) this
 4 Court should stay further proceedings pending the Ninth Circuit's decision in *Sunnyside I*.

5 Instead, Sunnyside spends most of its time complaining that it was "sent . . . on a
 6 wild goose chase to New York" (Stay Opp., p. 1), suggesting that its New York litigation
 7 was needless, in addition to being unsuccessful. (Interestingly, Sunnyside never explains
 8 why it is still maintaining an appeal to the Second Circuit in the New York litigation, if it
 9 indeed is a "wild goose chase.") For present purposes, though, even Sunnyside concedes
 10 that the New York proceedings are "wholly irrelevant" to the stay motion before this Court.
 11 Stay Opp., p. 3. Rather, the basis of this motion is Sunnyside's appeal to the Ninth Circuit
 12 of this Court's decision declining to add CDT Inc. to the judgment in *Sunnyside I*.
 13 *Sunnyside Dev. Co., LLC v. Opsys Limited*, No. C-05-553-MHP, 2007 WL 2462142, *11
 14 (N.D. Cal. Aug. 29, 2007), *appeal pending*, No. 07-16773 (9th Cir.).

15 The *Sunnyside I* appeal involves an issue that Sunnyside has described as central to
 16 this case (*Sunnyside II*). *See* remarks of counsel for Sunnyside in the transcript of case
 17 management conference of July 21, 2008, at 5-6 (focusing on the May 2005 transaction and
 18 describing the 2002 and 2004 transactions as "more for background"). That issue is
 19 whether the May 2005 transfer of equity in CDT Oxford from Opsys Limited to defendant
 20 and movant **CAMBRIDGE DISPLAY TECHNOLOGY LIMITED** ("CDT Ltd.") was a
 21 fraudulent transfer. This Court ruled in *Sunnyside I* that the May 2005 transfer was not a
 22 fraudulent transfer. *Sunnyside Dev. Co.*, 2007 WL 2462142, at *11.

23 The principal argument of CDT Ltd. in its companion motion to dismiss is that the
 24 doctrines of issue preclusion and claim preclusion bar any re-litigation of that issue here, in
 25 *Sunnyside II*, and CDT Ltd. would prefer a dismissal to a stay. But should the Court
 26 decline to dismiss *Sunnyside II*, at the very least it should await the Ninth Circuit's ruling
 27 on the fraudulent transfer issue in *Sunnyside I* before investing scarce judicial resources
 28 revisiting it here.

1 **II. ARGUMENT.**2 **A. This Court has discretion to enter a stay.**

3 Sunnyside does not, and cannot, dispute that this Court has discretion to enter a stay.

4 *See Stay Opp., p. 6.* The Ninth Circuit has summarized the controlling principles: “A trial

5 court may, with propriety, find it is efficient for its own docket and the fairest course for the

6 parties to enter a stay of an action before it, pending resolution of independent proceedings

7 which bear upon the case. ... In such cases the court may order a stay of the action

8 pursuant to its power to control its docket and calendar and to provide for a just

9 determination of the cases pending before it.” *Leyva v. Certified Grocers of California,*

10 *Ltd.*, 593 F.2d 857, 863-64 (9th Cir. 1979) (citations omitted). Indeed, the Ninth Circuit

11 case quoted by Sunnyside also recognizes that deciding whether to issue a stay is a matter

12 of weighing “the competing interests which will be affected by the granting or refusal to

13 grant a stay.” *Lockyer v. Mirant*, 398 F.3d 1098, 1010 (9th Cir. 2005).

14 Sunnyside is wrong in suggesting that a stay in this case will result in “a litigant in

15 one cause be[ing] compelled to stand aside while a litigant in another settles the rule of law

16 that will define the rights of both.” Stay Opp., p. 6; quoting *Landis v. North American Co.*,

17 299 U.S. 248, 255 (1936). Here, we are only asking that this Court stay further proceedings

18 until the Ninth Circuit settles the rule of law in *Sunnyside I*. Obviously, Sunnyside is a

19 party in the Ninth Circuit proceedings in *Sunnyside I*; indeed, it is the appellant and brought

20 those proceedings. Thus, Sunnyside is **not** being asked to stand aside as a helpless

21 bystander.

22 Citing the Supreme Court’s opinion in *Landis*, Sunnyside erroneously argues that

23 “[a] party seeking a stay of discovery pending a motion to dismiss ‘must make out a clear

24 case of hardship or inequity in being required to go forward. . .’” Stay Opp., p. 1. Yet,

25 *Landis* itself goes on to say that “[c]onsiderations such as these, however, are counsels of

26 moderation rather than limitations upon power.” 299 U.S. at 255. Indeed, the Ninth Circuit

27 has observed that it has “sustained, or authorized in principle, *Landis* stays on several

28 occasions.” *Lockyer*, 398 F.3d at 1110. These Ninth Circuit cases have been counseled by

1 the Supreme Court's guidance in *Landis* that: "[T]he power to stay proceedings is
 2 incidental to the power inherent in every court to control the disposition of the causes on its
 3 docket with economy of time and effort for itself, for counsel, and for litigants. How this
 4 can best be done calls for the exercise of judgment, which must weigh competing interests
 5 and maintain an even balance." *Landis*, 299 U.S. at 254-55. Sunnyside asserts, without
 6 support, that in *Sunnyside I* its "Rule 25 motion expressly reserved litigating its fraudulent
 7 conveyance claims against other entities." Stay Opp., p. 3.

8 **B. Should the Court not dismiss all of *Sunnyside II*, it should stay further
 9 procedures in *Sunnyside II* pending the Ninth Circuit's decision in *Sunnyside I*.**

10 In *Sunnyside I*, the Ninth Circuit is being asked to review this Court's ruling
 11 denying Sunnyside's motion pursuant to Rules 25(c) and 69 of the Federal Rules of Civil
 12 Procedure to add CDT Inc. to the judgment. If the Ninth Circuit affirms this Court's ruling,
 13 it doubtlessly would address this Court's ruling that the May 2005 transactions were not
 14 fraudulent. As this Court said:

15 Plaintiffs additionally point to the fact that defendants transferred CDT
 16 Oxford Limited from Opsys Limited to CDT Limited in 2005, while this
 17 action was pending, leaving Opsys Limited with no assets. Bunzel Dec. ¶ J.
 18 CDT, Inc. claims that these transfers were planned in late 2004, prior to the
 19 initiation of this lawsuit. Black Dec. ¶¶ 24-25. At the time of these transfers,
 20 CDT Limited, rather than CDT, Inc., was a defendant in this action. *Id.* An
 21 asset transfer between defendants is hardly an attempt to thwart a plaintiff's
 22 ability to collect. **These facts do not support a finding of fraudulent
 23 transfer.**

24 *Sunnyside Dev. Co.*, 2007 WL 2462142, at *11 (emphasis added). The Ninth Circuit's
 25 ruling on this point should bind Sunnyside in the current proceedings in *Sunnyside II*.

26 Sunnyside's only response is its argument that the Ninth Circuit will be deciding
 27 whether CDT Inc. is liable, while the current action is against CDT Ltd. That misses the
 28 point: *Sunnyside I* and *Sunnyside II* both allege that the May 2005 transactions were
 29 fraudulent and involved fraudulent transfers. As the Court may verify for itself, the parties
 30 discuss the May 2005 transaction at length in their Ninth Circuit briefing. CDT Ltd. has
 31 provided all three of the Ninth Circuit briefs in its request for judicial notice filed herewith,

1 Dkt. 43. *See* Principal Brief of Appellant Sunnyside Development Company (Dkt. 43
 2 Ex. A at 6-10, 16, 21-22, 27-28); Brief for Appellee Cambridge Display Technology, Inc.
 3 (*id.* Ex. B at 2, 9, 27, 43-45); Reply Brief of Appellant Sunnyside Development Company
 4 (*id.* Ex. C at 10, 14-15, 19). In its reply, Sunnyside expressly stated: “Sunnyside’s present
 5 claim challenges Opsys Limited’s 2002 and 2005 transactions....” *Id.* Ex. C at 10.

6 Sunnyside also devotes several pages in its Ninth Circuit briefs to the same claim it
 7 makes now in *Sunnyside II* that CDT Inc. mischaracterized the nature of the escrow account
 8 created during the 2004 transactions. *Compare* Sunnyside’s opposition to CDT Ltd.’s
 9 motion to dismiss (Dkt. 40), at 4, 8, 20, 21, 23 (seven references to “extravagant
 10 mischaracterizations”) *with* Dkt. 43 Ex. A at 4, 12-13 and *id.* Ex. C at 17. CDT Inc.
 11 responded to these arguments in its Ninth Circuit Brief (Dkt. 43 Ex. B at 35-37, 42 n.8), just
 12 as it has in the current proceedings. *See* Reply Memorandum in Support of Defendant
 13 Cambridge Display Technology Limited’s Motion to Dismiss Complaint, filed herewith.

14 Thus, there plainly is overlap between the two proceedings. In particular, the May
 15 2005 transactions are at the heart of both proceedings. Both judicial economy and fairness
 16 to the parties would be best served by awaiting the Ninth Circuit’s ruling on whether or not
 17 the May 2005 transactions were fraudulent. Sunnyside does not deny that this Court held in
 18 *Sunnyside I* that the May 2005 transactions were not fraudulent. An affirmance of that
 19 ruling by the Ninth Circuit would, in all likelihood, bar most or all of Sunnyside’s
 20 fraudulent conveyance claim in this proceeding.

21 **III. CONCLUSION.**

22 For the reasons stated above and in its Motion to Stay, CDT Ltd. submits that, if this
 23 action is not dismissed pursuant to defendants’ motions to dismiss, it should, in the
 24 alternative, be stayed pending resolution of the appeal in *Sunnyside I*.

25 Dated: August 25, 2008.

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